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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,851	11/26/2002	William Edward Jennings	1700.125	3373

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EXAMINER

SODERQUIST, ARLEN

ART UNIT PAPER NUMBER

1743

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/065,851

**Applicant(s)**

JENNINGS, WILLIAM EDWARD

**Examiner**

Arlen Soderquist

**Art Unit**

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6, 7, 10-31, 33-45 and 47-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 6, 7, 10-31 and 33-44 is/are allowed.
- 6) ☒ Claim(s) 45 and 47-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 45, 47 and 49-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Doleman (US 5,015,445, newly applied). In the patent Doleman teaches process and apparatus for hydrolysis of proteins using microwaves. The figures and description teach a vessel (100) for microwave chemistry having a microwave transparent (pyrex glass) well (101) having a mouth (107) in communication therewith. Element 103 is a flexible septum that is placed in contact with the mouth of the well and element 104 is a flexible (Teflon) cap that fixes the septum to the perimeter of the mouth to maintain the septum in a pressure sealing relationship defined by the flexing strength of the cap.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 45 and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Storar (US 5,088,612) in view of Friswell (US 4,094,641), Harwell (US 4,770,906) or Boyd (US 5,919,711, all newly cited and applied). In the patent Storar teaches a vial cap of plastic having a skirt portion press fit onto the neck of a vial. A transversely extending wall having a central opening is integral with the upper end portion of the skirt, and a sealing disc is positioned between the open end of the vial and the transverse wall. A plastic lid having a plastic hinge

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integrally connected between the lid and the skirt is provided for closing the central opening of the cap during storage. By the construction and arrangement of the plastic vial cap, the fear of aluminum toxicity is overcome and the lid prevents the accumulation of dust and other debris on the sealing disc while the vial is in storage. The figures show the flexible plastic cap (1) constructed and arranged to secure a rubber sealing disc (septum, 2) to the open end (mouth, 3) of a microwave transparent glass vial (well, 4) for containing a substance that is removable therefrom by a hypodermic needle insertable through the septum. Column 2, lines 3-10 teach the cap press fit on to the neck of the glass vial. Storar does not teach the type of plastic used.

In the patent Friswell teaches a low loss sample bottle assembly from which very small quantities of liquid can be removed safely, automatically and very nearly completely. The bottle is best equipped with a disposable, one piece, septum-like cap. A disposable septum cap (40) is taught in the paragraph bridging columns 3-4 as having means (42) to affix it to the sample bottle assembly, e.g. screw threads or a snap ring. The septum is a thin, diaphragm like central portion (44) of the cap through which the sampling conduit may penetrate. It is important that such a cap be selected from non-frangible plastic such as polypropylene, medium density polyethylene and the like.

In the patent Harwell teaches a method for producing polymeric films in which a substrate surface is contacted with a surfactant solution to coat the surface of a substrate such as particulate matter. Column 4, lines 20-30 and column 7, lines 7-15 teach that the substrate is contacted with the solution in different ways depending on the solution components, the surfactant, substrate, solvent and monomer, employed in the system. Often it will be desirable simply to immerse the substrate in the surfactant solution within a reaction vessel large enough to accommodate the volume occupied by the substrate and solution. When a volatile monomer, such as styrene, is used, airtight injectable vessels are desirable. Suitable containers of this type include 20 cc borosilicate glass vials sealed by teflon-lined neoprene septa held in place by polypropylene caps.

In the patent Boyd teaches an analytical cartridge adapted for use in analyzing fluids containing liquid and solid components. A preferred exemplary analytical cartridge is shown generally at 10 in figures 1-3. The analytical cartridge includes a hinged cap (18) and flexible

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septum (20). The hinged cap is preferably made from a suitable plastic, such as polypropylene or polyethylene or any other plastic that is flexible and inert with respect to biological fluids.

It would have been obvious to one of ordinary skill in the art to at the time the invention was made to have used polypropylene as the plastic of the Storar cap as taught by Friswell, Harwell or Boyd because of its known use in caps having septa therein and its properties of flexibility, non-frangibility and inertness to various fluids as taught by Friswell, Harwell and Boyd.

5. Claims 1-4, 6-7, 10-31 and 33-44 are allowed.
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The additionally cited art relates to caps with septa.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arlen Soderquist whose telephone number is (571) 272-1265. The examiner can normally be reached on Monday-Thursday and Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arlen Soderquist  
Primary Examiner

Approved 08/11/06

Replacement Sheet  
10/065,851

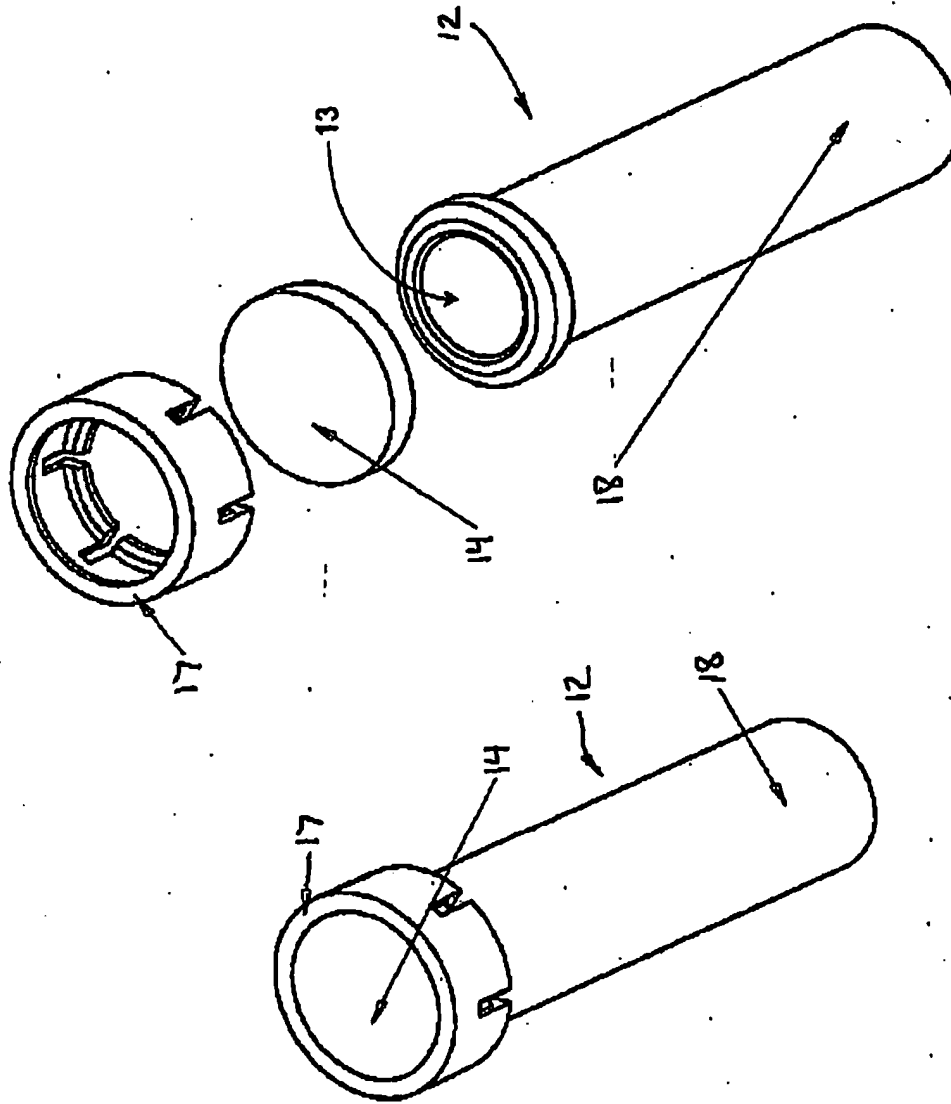


Fig. 6